

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:	:	
	:	
Weirton Steel Corporation	:	
400 Three Springs Drive	:	
Weirton, West Virginia, 26062	:	
	:	ADMINISTRATIVE ORDER
and	:	
	:	
Robert Green	:	
1275 Cove Hill Road	:	DOCKET NO.: III-99-009DA
Weirton, West Virginia 26062,	:	
	:	
Respondents	:	
	:	

I. Statutory Authority

This Order is issued pursuant to Section 113(a)(3) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a)(3). Under Section 113(a)(3) of the Act, the United States Environmental Protection Agency (EPA) has the authority to issue Orders requiring persons to comply with the Act and with the National Emission Standards for Hazardous Air Pollutants promulgated under Section 112 of the Act, 42 U.S.C. § 7412. This Order is issued to Weirton Steel Corporation (WSC) and Robert Green (collectively referred to herein as the Respondents).

II. Applicable Statutes and Regulations

1. Section 112 of the Clean Air Act, 42 U.S.C. §§ 7412, authorized EPA to promulgate National Emission Standards for Hazardous Air Pollutants. EPA promulgated the Asbestos NESHAP pursuant to this authority. The Asbestos NESHAP, which was in effect before the enactment of the Clean Air Act Amendments of 1990, Pub. Law 101-549, on November 15, 1990, remains in force and effect after the date of enactment, in accordance with the provisions of Section 112(q) of the Act, as amended, 42 U.S.C. § 7412(q).
2. Pursuant to Section 112 of the Act, 42 U.S.C. § 7412, EPA has adopted a National Emission Standard for Asbestos, codified at 40 C.F.R. Part 61, Subpart M (Asbestos NESHAP). The Asbestos NESHAP requires, among other things, that owners and operators of renovation and demolition activities involving asbestos follow certain procedures designed to minimize

asbestos emissions. The Asbestos NESHAP was adopted because exposure to asbestos has been found by EPA to cause cancer and asbestosis in human beings.

3. EPA has been granted authority, under Section 113(a)(3) of the Clean Air Act, 42 U.S.C. § 7413(a)(3), to enforce the Asbestos NESHAP by issuance of an order requiring a violator to comply with the requirements of the Asbestos NESHAP.

4. Under 40 C.F.R. § 61.145(a)(4), in a facility being renovated, notification requirements and procedures for asbestos emission control apply if the combined amount of RACM to be stripped, removed, dislodged, cut, drilled, or similarly disturbed is at least 80 linear meters (260 linear feet) on pipes, at least 15 square meters (160 square feet) on other facility components, or at least 1 cubic meter (35 cubic feet) off facility components where the length or area could not be measured previously.

5. 40 C.F.R. § 61.145(c) requires each owner or operator of a renovation operation at a facility containing the regulated amount of asbestos under 40 C.F.R. § 61.145(a) to comply with certain work practices to prevent emission of particulate asbestos material to the outside air.

6. The Asbestos NESHAP requires owners or operators of a renovation activity to wet adequately all RACM (including material that has been removed or stripped) and to ensure that the RACM remains wet until collected and contained or treated in preparation for disposal. 40 C.F.R. § 61.145(c)(6).

7. Pursuant to 40 C.F.R. § 61.145(c)(8), no RACM shall be stripped, removed, or otherwise handled or disturbed at a facility unless at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of the Asbestos NESHAP and the means of complying with them is present.

8. The Asbestos NESHAP requires owners or operators of a site where renovation involving asbestos material takes place to deposit all asbestos-containing waste material as soon as is practical at a waste disposal site operated in accordance with the provisions of 40 C.F.R. § 61.154 or at an EPA-approved site that converts RACM and asbestos-containing waste material into nonasbestos (asbestos-free) material according to the provisions of 40 C.F.R. § 61.155. 40 C.F.R. § 61.150(b).

9. 40 C.F.R. § 141 defines "active waste disposal site" as any disposal site other than an inactive site.

10. 40 C.F.R. § 61.154 requires that each owner or operator of an active waste disposal site that receives asbestos-containing waste material from a source covered under 40 C.F.R. §§ 61.149, 61.150, or 61.155 shall meet certain requirements, including the requirements of 40 C.F.R. § 61.154(a), (c) or (d).

III. Findings of Fact

11. Weirton Steel Corporation is a West Virginia corporation and is the owner and operator of a steel manufacturing facility located at 400 Three Springs Drive, Weirton, West Virginia 26062-4989 (Facility).

12. Robert Green is the owner of a property and building located at 1275 Cove Hill Road, Weirton, West Virginia 26062 (Cove Hill Road Site). Robert Green operates Green's Road and Towing Inc. at the Cove Hill Road Site.

13. David Bartoli is the owner of a property and residence located at 1072 Pennsylvania Avenue, Weirton, West Virginia 26062 (Pennsylvania Avenue Site).

14. On or about November 15, 1996, the WSC forwarded a Notification of Abatement, Demolition or Renovation form (Notification) to West Virginia. WSC indicated in the Notification that 87,000 square feet of asbestos containing material would be removed from the Facility.

15. On May 13, 1999, a representative from West Virginia Department of Environmental Protection inspected the Pennsylvania Avenue Site. The inspector observed debris including rope gasket, electric wire casing, brick and mortar that had been removed during the renovation and demolition activities at the Facility and disposed of at the Pennsylvania Avenue Site. The inspector collected seven samples of the debris. Subsequent Polarized Light Microscopy tests of the samples revealed that the two samples of the rope gasket and electric wire casing contained at least 80 percent asbestos.

16. On May 18, 1999, a representative from the West Virginia Department of Environmental Protection inspected the Facility and the Pennsylvania Avenue Site. During this inspection the inspector observed debris including rope gasket electric, wire casing, brick and mortar that had been removed during the renovation and demolition activities at the Facility and disposed of at the Pennsylvania Avenue Site. The inspector photographed the debris and collected four samples of the debris at the Facility. Subsequent Polarized Light Microscopy tests of the samples revealed that the two samples of the rope gasket and electric wire casing contained more than 90 percent asbestos.

17. On June 9, 1999, two duly-authorized representatives of EPA conducted an inspection of the Facility and the Pennsylvania Avenue Site. During the inspection, the EPA inspectors observed that portions of the Facility had been partially demolished. The EPA inspectors observed at the Facility and the Pennsylvania Avenue Site debris that contained dry, broken, suspected asbestos, which had been removed during the renovation and demolition activities at the Facility. The suspected asbestos material at the Facility and at the Pennsylvania Avenue Site was not in containment. The EPA inspectors determined that the dry, suspected asbestos at the Facility and the Pennsylvania Avenue Site could be crumbled, pulverized, or reduced to a powder by hand pressure.

18. During the June 9, 1999 inspection, EPA inspectors sampled and photographed the suspected asbestos-containing material including asbestos coated electrical wire and asbestos rope gasket at the Facility.

19. At the time of the June 9, 1999 inspection, the EPA inspectors observed at the Pennsylvania Avenue Site along the length of a ravine debris that contained dry, broken, suspected asbestos. WSC personnel advised the EPA inspectors that this debris was removed from the Facility during WSC's renovation and demolition activities and was transported to the Pennsylvania Avenue Site by Mr. David Bartoli.

20. On June 9, 1999, the dry asbestos-containing debris that had been stripped or removed remained uncontained inside the Facility and at the Pennsylvania Avenue Site. This dry asbestos containing debris had not been kept adequately wet until proper disposal. None of this material has been disposed of at a waste disposal site operated in accordance with the provisions of the Asbestos NESHAP.

21. On June 9, 1999, the EPA inspector observed that WSC failed to have at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of the Asbestos NESHAP and the means of complying with them, present during the stripping, removal, handling or other disturbance of the asbestos containing material from the Facility on or before June 9, 1999.

22. The debris found at the Pennsylvania Avenue Site that included the asbestos coated electrical wire and asbestos rope gasket was transported from the Facility by David Bartoli with the permission of WSC personnel.

23. On June 22, 1999, EPA issued an administrative order, Docket Number CAA-3-99-0010, to WSC and David Bartoli requiring, among other things preparation and implementation of a work plan designed to address and eliminate asbestos contamination at the Facility and the Pennsylvania Avenue Site.

24. On July 16, 1999, Chester Babst of Babst, Calland, Clements & Zomnir, counsel for WSC, notified EPA verbally that additional material, from the asbestos renovations conducted at the Facility was disposed of at the Cove Hill Road Site. Mr. Babst estimated that approximately four truck loads of the same material disposed of at the Pennsylvania Avenue Site were transported by Mr. Robert Green to the Cove Hill Road Site.

IV. Conclusions of Law

25. WSC operated, controlled or supervised a renovation activity at the Facility which included the removal of asbestos coated electrical wire and asbestos rope gasket.

26. The asbestos coated electrical wire and asbestos rope gasket removed from the Facility that was observed by the EPA inspectors on June 9, 1999 at the WSC Facility and the Pennsylvania Avenue Site and the material the was disposed of Cove Hill Road Site was "asbestos-containing waste material"¹ and "regulated asbestos-containing material" (RACM).²

27. The material from the WSC Facility that was transported by Mr. Robert Green and disposed of at the Cove Hill Road Site was "asbestos-containing waste material" and "RACM".

28. The renovation work at the Facility was subject to the requirements of the Asbestos NESHAP because it involved RACM in quantities larger than the 15 square meters (160 square feet) applicability level set by the Asbestos NESHAP.

29. WSC was an "owner or operator"³ of the "renovation"⁴ activity (as those terms are defined in 40 C.F.R. § 61.141) at the Facility.

30. WSC violated the Asbestos NESHAP by, among other things, failing to:

(a) adequately wet all RACM including material that has been stripped or removed during renovation and ensure that the RACM remains wet until collected and contained or treated in preparation for disposal (40 C.F.R. § 61.145(c)(6));

¹ Pursuant to 40 C.F.R. § 61.141, "asbestos-containing waste material" means, in pertinent part, mill tailings or any waste that contains commercial asbestos and is generated by a source, subject to the provisions of this subpart, including friable asbestos material and materials contaminated with asbestos including disposable equipment and clothing.

² Under 40 C.F.R. § 61.141, regulated asbestos-containing material (RACM) means (a) friable asbestos material, (b) Category I nonfriable ACM that has become friable, (c) Category I nonfriable ACM that will be or has been subjected to sanding, grinding, cutting, or abrading, or (d) Category II nonfriable ACM that has a high probability of becoming or has become crumbled, pulverized, or reduced to powder by the forces expected to act on the material in the course of demolition or renovation operations regulated by Subpart M.

³ Under 40 C.F.R. § 61.141, "owner or operator" of a demolition or renovation activity means any person who owns, leases, operates, controls, or supervises the facility being demolished or renovated or any person who owns, leases, operates, controls, or supervises the demolition or renovation operation, or both.

⁴ Pursuant to 40 C.F.R. § 61.141, "renovation" means altering a facility or one or more facility components in any way, including the stripping or removal of RACM from a facility component.

(b) have at least one on-site representative, such as a foreman or management-level person or other authorized representative, trained in the provisions of the Asbestos NESHAP and the means of complying with them, must be present when any RACM is stripped, removed, or otherwise handled or disturbed at a facility (40 C.F.R. § 61.145(c)(8)); and

(c) deposit all asbestos-containing waste material as soon as is practical at waste disposal sites operated in accordance with the provisions of 40 C.F.R. §§ 61.154 & 61.155. (40 C.F.R. § 61.150(b)).

31. Robert Green received asbestos-containing waste material from a source subject to 40 C.F.R. § 61.150 and became the owner and operator of an "active waste disposal site" as that term is defined at 40 C.F.R. § 61.141 and subject to the requirements of 40 C.F.R. § 61.154.

32. Robert Green violated the asbestos NESHAP because he received asbestos-containing waste material from a source subject to 40 C.F.R. § 61.150 and failed to meet the requirements of 40 C.F.R. § 61.154(a), (c) or (d).

33. Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides that when the Administrator finds that a person is in violation of Section 112 of the Act, 42 U.S.C. § 7412, she may issue an Order requiring such person to comply with Section 112. Section 302(a) of the Act, 42 U.S.C. § 7602(a), provides that the term "Administrator" means the Administrator of EPA.

V. Order for Compliance

Pursuant to Sections 112 and 113(a)(3) of the Act, 42 U.S.C. §§ 7412 and 7413(a)(3), EPA hereby orders the Respondents to:

34. Cease immediately all activities at the Cove Hill Road Site which disturb asbestos-containing material or which might cause the release of asbestos fibers to the outside air and comply with the Asbestos NESHAP during this and any future demolition or renovation activities. Prior to further removal of asbestos from the Cove Hill Road Site, first properly clean up the Facility and the Cove Hill Road Site using the methods described in the paragraphs below.

35. Immediately upon receipt of this Order, secure the Cove Hill Road Site in a manner sufficient to prevent entry by unauthorized persons, and post around the Cove Hill Road Site asbestos warning signs clearly visible to the public, until all asbestos-containing material has been removed and collected and contained or treated in preparation for disposal in accordance with the Asbestos NESHAP and all asbestos-contaminated soil or surfaces have been cleaned.

36. Contract with a qualified asbestos abatement contractor to implement the corrective measures outlined in this Order and in the work plan approved by EPA as discussed below.

37. Within 72 hours of receipt of this Order, contract with a qualified person to inspect the Cove Hill Road Site, to assess remaining asbestos-containing materials (including asbestos waste materials) and to assess and determine the extent of asbestos contamination at the Cove Hill Road Site.

38. Within seven days of receipt of this Order, submit to EPA for review and approval a work plan designed to address and eliminate asbestos contamination at the Cove Hill Road Site. The work plan shall include provisions for decontamination of the Cove Hill Road Site, including decontamination of the soil at the Cove Hill Road Site. The work plan shall include a schedule of operations for expeditious performance of the work. The work plan shall comply with all federal, state and local statutes, rules and regulations including the Asbestos NESHAP, 40 C.F.R. Part 61, Subpart M and shall be subject to approval by EPA according to the provisions of the paragraphs below.

39. The EPA will review the work plan and notify the Respondents of EPA's approval or disapproval of the work plan. Upon approval by EPA, the work plan will become part of this Order and the Respondents shall implement the EPA-approved work plan in accordance with the terms and schedule contained therein. In the event that EPA disapproves the work plan, EPA will specify the deficiencies in writing. Within five (5) business days of receipt of EPA's disapproval, the Respondents shall amend and submit to EPA a revised submission that responds to and corrects the specified deficiencies. In the event of subsequent disapproval of the revised submission, EPA retains the right to submit its own modifications to the Respondents and require the Respondents to implement such modifications, or perform the response action and seek reimbursement of its costs from the Respondents and/or take any other action authorized by law. Any non-compliance with the EPA-approved work plan or non-compliance with EPA submitted modifications in the case of subsequent disapprovals as specified in this paragraph shall be considered a failure to comply with a requirement of this Order.

40. Properly dispose of all asbestos waste or asbestos-contaminated waste presently at the Cove Hill Road Site in accordance with the requirements of 40 C.F.R. §§ 61.150 and 61.154 and provide EPA with copies of all waste disposal documentation within ten days of disposal.

41. The requirements of paragraphs 30 through 39 above must be completed no later than sixty (60) days from Respondents' receipt of this order.

42. Submit, no later than five days after receipt of this Order, a certification that WSC and Robert Green will not contest this Order.

43. Notify EPA immediately by telephone and in writing upon completion of the work described above. Upon completion of the work, EPA will inspect the clean-up of these areas.

VI. Enforcement

Failure to comply with the above Order may result in a judicial or administrative action for appropriate relief, including civil penalties, as provided in Section 113 of the Act, 42 U.S.C. § 7413. EPA retains full authority to enforce the requirements of the Clean Air Act, 42 U.S.C. §§ 7401-7642, and nothing in this Order shall be construed to limit that authority.

VII. Responses to Order

Information required to be submitted to EPA under this Order must be sent to:

Garry D. Sherman
Regional Asbestos Program Coordinator
Pesticides/Asbestos Programs and
Enforcement Branch
U.S. EPA, Region III
1650 Arch Street (3WC32)
Philadelphia, PA 19103-2029
Phone: (215) 814-5267
Fax: (215) 814-3113

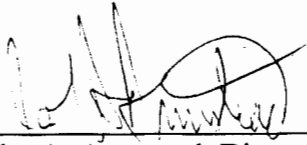
VIII. Business Confidentiality

You are entitled to assert a claim of business confidentiality covering all or part of any requested information, in the manner described in 40 C.F.R. § 2.203(b), unless such information is "emission data" as defined in 40 C.F.R. § 2.301(a)(2). Information subject to a claim of business confidentiality will be made available to the public only in accordance with the procedures set forth in 40 C.F.R. Part 2, Subpart B. Unless a confidentiality claim is asserted at the time requested information is provided, EPA may make this information available to the public without further notice to you.

IX. Questions Regarding Order

If you have any question concerning this Order, you may contact Garry D. Sherman, Regional Asbestos Program Coordinator, Pesticides/Asbestos Programs and Enforcement Branch, at (215) 814-5267. If you are represented by counsel, your counsel may contact Judith R. Hykel, Sr. Assistant Regional Counsel, with any questions at (215) 814-2646.

A copy of this Order has been sent to the West Virginia Department of Environmental Protection.



John A. Armstead, Director
Waste & Chemicals Management Division

SEP 15 1999

Date